

LLOYD K. JOHNSON

IBLA 71-39

Decided October 27, 1972

Appeal from decision (M 15907 (Minn)) of the Montana Land Office, Bureau of Land Management, rejecting application for hardrock prospecting permit.

Reversed and remanded.

Geological Survey--Mineral Lands: Leases--Mineral Lands: Prospecting Permits--Secretary of the Interior

A prospecting permit application, filed under the Act of June 30, 1950, 16 U.S.C. § 508(b) (1970), may be granted only where the lands are not known to contain valuable deposits of mineral. The determination whether a specific tract of land is subject to the issuance of a prospecting permit or of a mineral lease is committed to the Secretary. In making such a determination, the Secretary is entitled to rely upon advice furnished by his technical representative, the Director of the Geological Survey.

Act of June 30, 1950--Geological Survey--Mineral Lands: Prospecting Permits

The rejection of an application for a prospecting permit for lands within the exterior boundaries of a national forest in Minnesota, filed pursuant to the Act of June 30, 1950, 16 U.S.C. § 508(b) (1970), is properly reversed where the Geological Survey, upon reconsideration, determines that prospecting is needed to ascertain whether the land contains workable deposits of the minerals sought.

APPEARANCES: Lloyd K. Johnson, pro se.

OPINION BY MR. FISHMAN

Lloyd K. Johnson has appealed from a decision of the Montana Land Office, Bureau of Land Management, dated August 11, 1970, rejecting his application for a hardrock prospecting permit, filed pursuant to the Act of June 30, 1950, 16 U.S.C. § 508(b) (1970), authorizing the Secretary of the Interior to permit the prospecting for, and the development and utilization of, the mineral resources of certain lands situated within the exterior boundaries of national forests in Minnesota.

Appellant's application was rejected on the ground that the Director of the Geological Survey had stated that the land, within the exterior boundaries of the Superior National Forest, is included in a known leasing area. The decision pointed out that the denial of the application was without prejudice to appellant's right to apply for a competitive mineral lease of the lands, as provided by 43 CFR Part 3520 (1972).

In his appeal appellant asserts no reasons why he believes the Land Office decision to be in error. He simply urges that issuance of the permit would facilitate the continuance of exploratory drilling which was commenced during 1965 and 1966 when he held a previous prospecting permit for the land in issue.

The regulations governing the issuance of prospecting permits on both public and acquired lands, including national forest lands subject to the Act of June 30, 1950, 1/ are found in 43 CFR Part 3510. The character of the lands subject to the issuance of prospecting permits is described in 43 CFR 3510.0-3 (1972) in these words:

The Secretary of the Interior is authorized to issue permits to qualified applicants to prospect unclaimed and undeveloped areas of mineral lands and mineral deposits in public and acquired lands * * *. [Emphasis supplied.]

That provision must be read in pari materia with 43 CFR 3520.1-2(a) (1972), which in part reads as follows:

The Secretary is authorized to lease competitively those lands as set forth in Subpart 3501, containing valuable mineral deposits * * *.

Thus it is clear that if land is known to contain valuable deposits it is not subject to the issuance of a prospecting permit therefor. See Lowell Thompson, A-28342 (July 18, 1960); cf. Atlas Corporation, 76 I.D. 76 (1967).

The determination whether a specific tract of land is properly subject to the issuance of a prospecting permit or to a mineral lease is committed to the Secretary. In making such a determination, the Secretary is entitled to rely upon advice furnished by his technical

1/ The Act of June 30, 1950, appears in a listing of statutes to which the regulations set forth in 43 CFR Group 3500--Leasing of Minerals Other Than Oil and Gas--are applicable. See 43 CFR 3500.0-3(c)(6)(i) (1972).

representative, the Director of the Geological Survey. Rowland C. Townsend, A-30142 (September 14, 1965); Carl Nyman, 59 I.D. 238, 241 (1946).

On June 28, 1972, this office made inquiry of the Geological Survey, reciting in part as follows:

On June 23, 1970, Johnson applied for a prospecting permit for iron, titanium, copper, nickel, cobalt, platinum, gold and silver. The land embraced in the application is lot 7, sec. 30, T. 62 N., R. 10 W., 4th P.M. Minnesota, consisting of 36 acres.

Your memo to the land office, dated July 27, 1970, stated that "The land requested is located in a known leasing area and the application should be rejected."

I understand that, in your parlance, "known leasing area" as used in your memo of July 27, 1970, means an area in which there is direct geologic evidence that the mineral deposit is known or believed to exist in sufficient quantity and of such quality to establish that the deposit is workable and that prospecting is not required to determine these factors.

In his appeal, * * * the appellant asserts that a drill hole to 2300 feet has been made and that three other deep holes in the area have been dug, all without a showing of mineral. He also asserts that he held the land under prospecting permit, BLM 069618 during 1965 and 1966.

Presumably, before the issuance of prospecting permit, BLM 069618, your office determined that prospecting was appropriate. In the light of the assertions made by the appellant, it would seem, that prospecting is still warranted.

Moreover, the record contains no reference showing for what mineral or minerals the land is deemed by your agency to be valuable.

I would appreciate a detailed statement as to your current views of this matter. If you adhere to your finding of July 27, 1970, please reconcile it with the appellant's assertions, showing the specific facts upon which your determination is predicated. If you deem the land to be valuable for minerals, please identify

those minerals. What evidence, if any, has been adduced since BLM 069618 was issued?

The Geological Survey's response of October 5, 1972, stated that although its records did not reflect any drilling on the land in issue, drilling did take place on other lands in the area. That drilling was "inconclusive and no economic mineralization was found in the holes."

The Geological Survey further stated:

As a result of this reevaluation, we have now concluded that prospecting is in fact needed to determine whether the land under consideration contains workable deposits of the minerals enumerated in the application (iron, titanium, copper, nickel, cobalt, platinum, gold and silver).

Accordingly, we now recommend that the decision of August 11, 1970 be reversed and a prospecting permit issued to the appellant as requested.

In view of the foregoing, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for the issuance of a prospecting permit to the appellant, all else being regular.

Frederick Fishman, Member

We concur:

Edward W. Stuebing, Member

Anne Poindexter Lewis, Member

